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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,362	10/14/2003	Joseph A. Zupanick	067083.0283	9284
26231	7590	03/17/2006	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			STEPHENSON, DANIEL P	
			ART UNIT	PAPER NUMBER
			3672	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/687,362	ZUPANICK, JOSEPH A.	
	Examiner	Art Unit	
	Daniel P. Stephenson	3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 14-18 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 5-7, 11-13 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 4 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hogue. Hogue discloses a method of lowering a downhole device having a fluid agitator into the cavity of a subterranean zone. The cavity has a transverse dimension greater than the transverse dimension of the wellbore. The fluid within the cavity is agitated with the downhole device, by the outwardly extending arms. These arms actuate to a diameter that is greater than the wellbore diameter.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-4, 9, 10, 15, 18 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russ in view of Hogue. Russ discloses a method for removing particulate laden fluid in which a downhole device is positioned. The device contains a pump (22) and an agitator (28). The agitator agitates the fluid as it is being pumped out of the downhole cavity. The downhole device is put through a wellbore into a subsurface cavity. The agitator is made of a plurality of arms that are outwardly extendable. The pump and inlet are indirectly coupled with the agitator. It does not disclose lowering the device into fluid of a subterranean cavity of a subterranean zone. Hogue discloses a method of lowering a downhole device having a fluid agitator into the cavity of a subterranean zone. The cavity has a transverse dimension greater

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then the transverse dimension of the wellbore. The fluid within the cavity is agitated with the downhole device, by the outwardly extending arms. These arms actuate to a diameter that is greater than the wellbore diameter. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the apparatus of Russ in the cavity of Hogue. This would be done to revitalize the wellbore as taught by Hogue.

5. Claims 1-3, 9, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillger in view of Hogue. Hillger discloses a method for removing particulate laden fluid from a water well in which a downhole device is positioned. The device contains a downhole pump (7) and an agitator (29). The agitator agitates the fluid as it is being pumped out of the downhole cavity. Hillger does not disclose that the device is lowered into the fluid of a subterranean cavity of a subterranean zone with a transverse diameter greater than the diameter of the wellbore. Hogue discloses a well where the zone of the well has a transverse dimension greater than the wellbore leading to the cavity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method and apparatus of Hillger with the wellbore and cavity of Hogue. This would be done because to increase the flow of the cavity.

With regards to claim 16, it is Officially Noticed that it is notoriously conventional to use a variety of pumps in the wellbore art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a suction rod pump on the apparatus of Hillger in view of Russ. This would be done to allow for greater suction of fluid and for less contamination by particles.

It is noted that this is a reiteration of the Official Notice made in a previous action, and as such is now considered to be prior art.

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6. Claims 1-4, 8-10, 14-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields in view of Hogue. Fields discloses a method for removing particulate laden fluid from a water well in which a downhole device is positioned. The device contains a pump for the removal of fluid through an inlet (179) and an agitator (188). The agitator agitates the fluid as it is being pumped out of the downhole cavity. The agitator is comprised of a number of blunt arms that are expanded downhole inside the cavity. The arms are rotated about the longitudinal axis of the device. Fields does not disclose that the device is lowered into the fluid of a subterranean cavity of a subterranean zone with a transverse diameter greater than the diameter of the wellbore. Hogue discloses a well where the zone of the well has a transverse dimension greater than the wellbore leading to the cavity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method and apparatus of Fields with the wellbore and cavity of Hogue. This would be done because to increase the flow of the cavity.

With regards to claims 16 and 17, it is Officially Noticed that it is notoriously conventional to use a variety of pumps in the wellbore art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a downhole pump or suction rod pump on the apparatus of Fields in view of Russ. This would be done provide a variety of pumping methods based on design of the wellbore.

It is noted that this is a reiteration of the Official Notice made in a previous action, and as such is now considered to be prior art.

Allowable Subject Matter

7. Claims 5-7, 11-13 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Stephenson whose telephone number is (571) 272-7035. The examiner can normally be reached on 8:30 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Bagnell
Supervisory Patent Examiner
Art Unit 3672

DPS 